

**employment by the city or
county.**

December 19, 1947

Mr. Barclay Craighead, Chairman
Unemployment Compensation
Commission of Montana
Helena, Montana

Dear Mr. Craigead:

You have requested my opinion on the following question:

"Would you please advise me as to whether the laws of this State permit a city or county deputy officer to accept employment for a state agency with the consent of the City Council or Board of County Commissioners, where such employment is of a nature not to interfere with such deputy's regular employment by the city or county?"

There are several statutes which are pertinent to this question. Section 412, Revised Codes of Montana, 1935, provides:

"No county officer, under salary, must be appointed or act as deputy of another officer of the same county except in cases where the officer so appointed agrees to act and serve as such deputy without additional compensation." (Emphasis mine).

This section is specific in prohibiting a county officer from accepting further compensation as a deputy of another officer of the same county but in no way prohibits said officer from accepting compensation from other sources for work done by him outside his official duties.

Section 4731, Revised Codes of Montana, 1935, dealing with county and township officers provides in part:

". . . no compensation or salary must be allowed any deputy except as provided in this code."

This section is a limitation on the power of the county to increase the compensation or salary of any officer of the county by paying him in addition to the salary provided by law and thus avoid the limitations placed upon the county in this matter.

Opinion No. 85

**Cities—Counties—Offices and
Officers—Deputies.**

Held: A city or county deputy officer may accept employment from a state agency with the consent of the City Council or Board of County Commissioners, where such employment is of a nature not to interfere with such deputy's regular

Section 4864, Revised Codes of Montana, 1935, provides:

"No county officer shall receive for his own use, any fees, penalties or emoluments of any kind, except the salary as provided by law, for any official service rendered by him, but all fees, penalties and emoluments of every kind must be collected by him for the sole use of the county and must be accounted for and paid to the county treasurer as provided by Section 4887 of this code and shall be credited to the general fund of the county."

This section is again a limitation on the salary that can be received by an employee from the county employing him, and designating these certain monies collected by him to be county monies and not a part of his personal salary. This cannot be construed as being a limitation on the employee's receiving compensation for employment outside of and in addition to his official employment for the county, as the limitation is specifically limited to compensation for **official duties performed.**

The policy of the law as shown by reading all of these sections together is to prevent the county employee from receiving a larger salary than the law provides for the position by keeping part or all of the fees collected by him in his official position, or by receiving extra compensation for some of the duties which the law requires him to do in his official capacity.

There are some official positions which do not pay the employee a sufficiently large salary to live on without supplementing it from other sources. To find that these sections prevent the employee from receiving any other money than that paid him by the county would result in leaving some of the offices vacant or would make it impossible for the county to hire responsible personnel to fill positions of trust and responsibility.

There is no restriction on the employees of the city in the statutes. The section which covers compensation of city employees is silent on the matter. Section 5386, Revised Codes of Montana, 1935, provides in part:

"Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance from time to time provide, payable in equal monthly installments.

"The salary or compensation of all other employees of such city shall be fixed by the council, and shall be payable monthly, or at such shorter periods as the council shall provide."

This section does not put any restriction on the employee in the matter of outside employment or in the amount of compensation he may receive.

The rule is stated in 43 Am. Jur., Section 364, as follows:

"The law does not, of course, forbid extra compensation for extra services which have no affinity or connection with the duties of the office."

However, it should be pointed out, acceptance of part time employment under a state agency which receives the funds, or part of the funds, for payment of the salaries from the Federal Government would subject the recipient of the salary so paid to the provisions of Section 9 of the so-called Hatch Act, 18 U.S.C.A. 61h, which reads in part as follows:

"It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use this official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, . . . shall take any active part in political management or in political campaigns. . . ."

It is, therefore, my opinion a city or county deputy officer may accept employment from a state agency with the consent of the City Council or Board of County Commissioners, where such employment is of a nature not to interfere with such deputy's regular employment by the city or county.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General